

contribution can be extracted directly from payphone providers, whether LEC affiliated or not, by adjustment of the intrastate rates charged for connection of payphones to the network.

V. CONCLUSION

A number of regulatory issues and concerns have been raised regarding the proposed unbundling of payphone equipment from the underlying transmission service provided by the LECs. However, the same or analogous issues were raised in Computer II and other past proceedings regarding CPE, and were successfully addressed by the Commission in every case. The Commission can draw on its past experience in these proceedings to ensure that the unbundling of payphones is implemented in a way that protects state regulatory authority, enhances competition and benefits the end user.

TONKA TOOLS, INC., 58 RR 2d 903 (1985)



In the Matter of)
)
Petition for Declaratory Ruling of)
Tonka Tools, Inc. and Southern Merchandise)
Corp. Regarding American Telephone and)
Telegraph Company Provision of Coinless)
Pay Telephones)

Adopted: May 16, 1985
Released: May 22, 1985

[§79:702] Pay telephone exclusion.

The exclusion from the definition of customer premises equipment (and thus from the Computer II detariffing requirements) of pay telephone equipment was applicable to coinless pay telephone equipment as well as to the coin telephones existing at the time of the Computer II decision, even where the newer equipment did not rely on central office facilities and interaction for the completion of interexchange calls. Notwithstanding technical and regulatory changes, the coinless pay telephone equipment and its transmission capacity were not logically severable, and the equipment's primary function was still serving the telephone needs of the transient public. Coinless Pay Telephones, 58 RR 2d 903 [1985].

MEMORANDUM OPINION AND ORDER

By the Commission:

I. Introduction

1. Before the Commission is a petition for declaratory ruling filed by Tonka Tools, Inc. (Tonka) and Southern Merchandise Corporation (Southern) asking the Commission to find that American Telephone and Telegraph Company (AT&T) has been providing its coinless pay telephones in violation of the separate subsidiary requirements established in the Commission's Computer II decisions. 1/ In particular, petitioners allege that the "Card Caller" and "Custom Caller" telephones now being provided by AT&T Communications ATTCOM as part of a tariffed service offering constitute customer premises equipment (CPE) which under the current rules of Computer II can be provided by AT&T only through an unregulated, fully separated subsidiary on an unbundled basis. 2/ Petitioners request the Commission to issue a declaratory

1/ Amendment of §64.702 of the Commission's rules and regulations (Computer II), 77 FCC 2d 384 [47 RR 2d 669] (1980) (Final Decision), reconsideration, 84 FCC 2d 50 [49 RR 2d 1107] (1980), further reconsideration, 88 FCC 2d 512 [50 RR 2d 629] (1981), aff'd sub nom. CCIA v. FCC, 693 F.2d 198 [52 RR 2d 1021] (DC Cir. 1982), cert. denied, 465 S Ct 2109 (1983).

2/ There have been two Computer-II related decisions rendered since the comments were filed in this proceeding which bear on the issues discussed herein. First, in Report and Order in CC Docket No. 83-1375 (ATTIS Resale), 49 FR 28,835 (July 17, 1984), reconsideration pending, petition for stay denied, FCC 84-142 (released September 24, 1984), the Commission decided to allow AT&T to provide common carrier domestic services via resale through AT&T Information Services (ATTIS), its unregulated separate subsidiary, subject to the requirement that any ATTCOM offerings used by ATTIS be made available by ATTCOM through nondiscriminatory tariffs, and that ATTIS use only unbundled, nondiscriminatory offerings for its basic services. More recently, the

[Footnote continued on following page]

ruling to this effect and to direct ATTCOM to unbundle its current credit card telephone offerings and refrain from offering such devices in connection with its tariffed transmission services.

2. The petition was placed on public notice and comments and reply comments were received. 3/ Although the Computer II issue raised in the Tonka-Southern petition focuses on AT&T's provision of noncoin telephones, the comments also addressed the Bell Operating Companies' (BOCs) provision of coin and noncoin pay telephones. For the reasons discussed below, we conclude that the coin and coinless public telephones provided by the BOCs and AT&T do not constitute CPE for Computer II purposes.

II. Background

3. In its Computer II decisions the Commission determined that carrier-provided customer premises equipment and enhanced services would not be regulated under Title II of the Communications Act. 4/ The Commission concluded that since CPE was a competitively provided commodity which was severable from the carriers' associated transmission services, it was not in the public interest to permit carriers to continue to provide CPE under tariff. The Commission was concerned that if carriers were allowed to tariff and bundle this equipment with their basic services, consumer freedom of choice and marketplace competition in the developing non-carrier telecommunications equipment market would be hampered. The Commission recognized the potential that the regulated entity would use its control over network design and technical standards to favor its own equipment or services, or improperly shift costs and revenues between its unregulated activities provided in competition with others and its monopoly or other regulated activities. In order to allow common carriers to participate in the unregulated CPE markets while minimizing the potential for cross-subsidization and other anticompetitive conduct, the Computer II decisions provided that CPE should be detariffed and enhanced services remain untariffed, and provided separately from regulated activities. In the case of AT&T and the BOCs 5/ the Commission determined that enhanced services and CPE should be offered through a separate subsidiary.

2/ [Footnote continued from preceding page]

Commission has proposed relieving AT&T from the Computer II requirement that it provide CPE pursuant to structural separation. It issued an NPRM soliciting suggestions on less restrictive alternatives to reduce the potential that AT&T will engage in anticompetitive conduct in the terminal equipment market. Memorandum Opinion and Order and Notice of Proposed Rule Making, CC Docket No. 85-26 (FCC 85-56), released February 22, 1985 (Computer II NPRM).

3/ Comments on the Tonka-Southern petition for declaratory ruling were filed by the following parties: AT&T; Southwestern Bell Telephone Company (Southwestern Bell); Pacific Bell and Nevada Bell (Pacific Bell); New England Telephone and Telegraph Company, New York Telephone Company, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company (The NYNEX and Southern Bell Companies); Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (The Mountain Bell Companies); GTE Service Corporation (GTE); and National Pay Telephone Corporation (NPTC). Reply comments were filed by petitioners: NPTC; Southwestern Bell; The Bell Telephone Company of Pennsylvania, The Four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, and New Jersey Bell Telephone Company (Bell Atlantic Companies); Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc. (Ameritech Companies); The NYNEX and Southern Bell Companies; and AT&T.

4/ The Commission developed a regulatory structure classifying carrier service offerings as either "basic" or "enhanced." "Basic services" — services which involve no more than the simple transmission of information between two or more points — remain subject to Commission regulation; "enhanced services" — services which act on the format or content of the message being transmitted, provide the customer with additional or restructured information, or allow the customer to interact with stored information — remain unregulated. See 47 CFR §64.702(a).

5/ [Footnote on following page]



4. Computer II defined CPE as "terminal equipment located at a subscriber's premises which is connected with the termination of a carrier's communication channel(s) at the network interface at that subscriber's premises." Final Decision, 77 FCC 2d 384, 398, n. 10. Excluded from the definition of CPE was "over voltage protection equipment, inside wiring, coin-operated or pay telephones, and multiplexing equipment to deliver multiple channels to the customer," as well as "CPE attached to residential party line service. . . ." Id. at 447, n. 57, (emphasis added). Thus, on its face, Computer II did not detariff the provision of coin or coinless telephones by AT&T or the BOCs.

5. As to the provision of pay telephones by entities other than AT&T and the BOCs, notably noncarriers, Part 68 of the Commission's rules provides the technical and procedural standards under which all customer-provided telephone equipment may be connected to the nationwide telephone network, "for use in conjunction with all services other than party line service and coin service." 47 CFR §68.2(a)(1). Devices used in conjunction with coin service were excluded from Part 68 because, in the words of the First Report and Order in CC Docket No. 19528 establishing the Part 68 registration program, 6/ "under present regulatory policies only telephone carriers may provide coin telephone service." 7/ At that time, the only type of coin telephones available were those activated and controlled through the telephone company's central office, and they were used to provide a service which was the exclusive province of the telephone companies. Moreover, resale of both intrastate and interstate telecommunications services was at that time generally prohibited by telephone company tariffs. 8/ Manufacturers or purchasers of coin telephone equipment therefore had no authority under Part 68 to connect such equipment to the network. More recently, however, in response to an application seeking to register a coin-operated telephone device under Part 68, the Commission clarified the Part 68 status of coin-operated telephones and interpreted the "coin service" exclusion contained in §68.2(a)(1) to extend only to "central office implemented" coin service, and not to "instrument-implemented" coin telephones. 9/ By so doing, the Commission affirmed the registrability of

5/ [Footnote from preceding page]

See supra note 1; *Furnishing of Customer Premises Equipment, Enhanced Services and Cellular and Communications Services by the Bell Operating Companies*, 95 FCC 2d 1117 (1983), reconsideration, 49 FR 26056 (June 26, 1984), aff'd sub nom. *Illinois Bell Tel. Co. v. FCC*, 740 F2d 465 (7th Cir., 1984), petition for rehearing pending, in which the Commission concluded that, with certain modifications, the structural separation requirements of Computer II would continue to be applicable to the BOCs after their divestiture from AT&T pursuant to the Modification of Final Judgment (MFJ). *United States v. American Telephone & Telegraph Co.*, 552 F Supp 131 (DDC 1982), aff'd sub nom. *Maryland v. United States*, 103 S Ct 1240 (1983).

6/ 56 FCC 2d 593 (1975), Second Report and Order, 58 FCC 2d 736 (1976), aff'd sub nom. *North Carolina Utilities Commission v. FCC*, 552 F2d 1036 (4th Cir. 1977), cert. denied, 434 US 874 (1977).

7/ 56 FCC 2d at 600, n. 7.

8/ The Commission subsequently found common carrier tariff restrictions on interstate resale to be unlawful in *Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261 (1976), recon., 62 FCC 2d 588 (1977), aff'd sub nom. *AT&T v. FCC*, 572 F2d 17 (2d Cir.), cert. denied, 439 US 875 (1978); *Resale and Shared Use of Common Carrier Domestic Public Switched Network Services*, 83 FCC 2d 167 (1980).

9/ Memorandum Opinion and Order, FCC 84-270, released June 25, 1984, 49 FR 27,763 (July 6, 1984) (Coin Registration Order), recon. denied, Memorandum Opinion and Order, FCC 85-16, released January 22, 1985. That order defined "coin operated telephone" to encompass all telephones capable of accepting payment by specie or paper money; telephones capable of accepting payment solely by credit card were already registrable under Part 68. See infra note 12. "Coin service" is defined to be the unique service that uses, typically, a TSPS (traffic service position system) operator on telephone company premises in conjunction with a terminal device that provides coin insert tones and engages in an electrical protocol exchange with central office equipment to control coin deposit.

[Footnote continued on following page]

instrument-implemented coin-operated telephones, and the right of any person purchasing such a telephone to connect it to the network and use it to provide authorized interstate services and, to the extent consonant with state law and policy, intrastate services. ^{10/} The Commission reached this result because it determined that Part 68's coin service exclusion was directed at the coin telephones designed for use in conjunction with the telephone companies' integrated coin telephone service and was not formulated in the context of the newly available breed of instrument-implemented coin devices that could be attached to regular telephone company subscriber lines. The Commission found there was no valid basis to exclude instrument-implemented coin telephones from the registration program. ^{11/}

III. Comments

6. The Commission now has before it a declaratory ruling petition which asks the Commission to find that ATTCOM's provision of its coinless Card Caller and Custom Caller ^{12/} pay telephones violates Computer II because these devices are CPE and are not being offered through the required unregulated Computer II separate subsidiary. Petitioners argue that these coinless devices are not within the class of conventional telephone company-provided telephones used to provide traditional coin service excluded from the Computer II definition of CPE. They claim that Computer II found CPE to be a severable commodity and required that CPE be separately provided in order to promote competition between multiple vendors in the terminal equipment marketplace. Petitioners reason that because at the time of Computer II no competition existed in the coin telephone service or equipment market, and the coin telephones provided by the local exchange companies operated in conjunction with special coin service lines, coin telephones were excluded from the class of equipment to be deregulated. By contrast, today there are several registered coinless pay telephone models being competitively supplied, ^{13/} and these devices do not require coin service lines or interaction with central office equipment, but may be connected to ordinary business lines. ^{14/}

7. GTE and NPTC, the only parties supporting the petition, urge the Commission to find that the equipment used by carriers to provide pay telephone service constitutes CPE. ^{15/} Like

^{9/} [Footnote continued from preceding page]

Coin Registration Order at Para. 9. "Instrument-implemented" coin telephones, by contrast, are those coin devices that contain all the intelligence required to execute coin acceptance and other coin-related functions in the telephone instrument itself, without central office involvement, without line polarity reversal, (or other special electrical protocols), and without TSPS operator intervention. Id. at para. 10.

^{10/} In response to a petition for declaratory ruling recently filed by Universal Pay Telephone Corporation, the Commission has recently issued an order clarifying the relationship between federal and state regulatory authority over pay telephone services. FCC No. 85-222, released May 6, 1985.

^{11/} To date, 16 such devices have been registered.

^{12/} Both of these devices are Part 68 registered. The Card Caller (reg. no. AS593M-70796-TE-T, which provides for payment by use of coded magnetic strip charge cards inserted into the telephone, including AT&T cards and authorized commercial credit cards, was registered by a Common Carrier Bureau Order released March 13, 1984, FCC No. 2866. That Order also registered the "MCI Expressphone" credit card device (reg. No. D536XC-70797-TE-T). The Customer Caller (reg. no. AS593M-63169-MT-E), a modified table top multifunction Genesis telephone which is activated by the customer punching in his AT&T Calling Card number, was registered on September 15, 1982.

^{13/} Id.

^{14/} Although primarily challenging ATTCOM's provision of credit card devices, petitioners argue in a footnote to their petition that the Computer II consequences for similar coin-operated devices, i.e., those referred to as "instrument-implemented" by the language of our Coin Registration Order, should be identical. Petition at 9, n. 10.

^{15/} [Footnote on following page]



petitioners. NPTC argues that Computer II's CPE pay telephone exclusion was formulated in the context of the traditional telephone company-provided coin telephone service offered on a monopoly basis which depended on central office involvement and specialized coin circuits, and did not address the more recently available pay telephone devices which can operate with ordinary subscriber lines. They claim that, like ordinary CPE detariffed by Computer II, these newer devices are logically and technically severable from the underlying transmission service. NPTC Comments at 4-6. They furthermore contend that notwithstanding Computer II's CPE definition, the Bureau's March 13, 1984 registration of two credit card devices, *supra* note 12, constitutes a determination that these registered devices are indeed CPE. 16/ NPTC Comments at 5; GTE Comments at 2. NPTC argues that allowing a dominant service provider such as ATTCOM to continue bundling jeopardizes both the ability of those who wish to offer pay telephone service to obtain the service and equipment packages of their choice, and the development of a competitive market in this area that is fair to both carriers and noncarriers. 17/ NPTC Comments at 6. In NPTC's view, these arguments apply with equal or greater force to the divested BOCs.

8. AT&T, Southwestern Bell, Pacific Bell, the NYNEX and Southern Bell Companies, the Mountain Bell Companies, Bell Atlantic, and the Ameritech Companies all oppose imposition of the Computer II constraints on BOC/AT&T provision of coin and credit card devices, and ask the Commission to reaffirm its prior determination in the Computer II decisions that coin and other pay telephones are not CPE. 18/ In their view, there are significant differences between pay telephones and other terminal equipment, and compelling public policy reasons which justify excluding pay telephones from the category of Computer II CPE, and allowing state authorities to regulate this type of equipment. They claim that pay telephones — whose true customer is the general public rather than the owner of the device — do not fall within Computer II's primary definition of CPE because such telephones are not located "at a subscriber's premises" within the intended meaning of the phrase. According to AT&T and the BOCs, a crucial difference between Computer II CPE and pay telephone equipment is that the former is located on the premises of an individual who both owns and is the primary user, i.e., customer, of that equipment, while the latter is located on the premises of a party who is not its primary user or customer. Because the true customer of pay telephone equipment is the general public rather than the owner of the instrument or premises on which it is located, they conclude these devices are not CPE. See AT&T Comments at 5. 19/ And, in contrast to the

15/ [Footnote from preceding page]

GTE agrees with the petition only insofar as it regards the provision of the "Card Caller," "Customer Caller" or other registered magnetic card or coinless pay telephones, not to the extent it encompasses coin activated telephones. GTE bases its position on the grounds that coin telephones, which had yet to be registered under Part 68, raise distinct regulatory issues. GTE Comments at 4-5.

16/ NPTC states it does not necessarily oppose AT&T provision of an end-to-end pay telephone service. NPTC suggests that the Commission consider a Computer II waiver until the proceedings relating to ATTIS resale and elimination of the Computer II structural separation rules, *supra* note 2, are completed, to permit ATTCOM (and the BOCs) to provide an integrated pay telephone service. NPTC Comments at 7-8.

17/ AT&T counters NPTC's claim by noting that, irrespective of AT&T's manner of providing pay telephone service, AT&T's interstate services are fully subject to resale and shared use. AT&T Reply Comments at 2-3.

18/ In their comments, filed before issuance of the Commission's Coin Registration Order first articulating the instrument-implemented/central office coin service dichotomy, these parties do not distinguish between central office and instrument-implemented varieties of pay telephone service. They generally oppose classifying any carrier provided pay telephone equipment as CPE, and urge the Commission to use this proceeding to clarify and unravel the "regulatory web in which public telephone services are entwined." See The Mountain Bell Companies Comments at 2.

19/ [Footnote on following page]

CPE detariffed by Computer II, pay telephones cannot be severed from the underlying transmission service; the user buys the call and does not separately select or pay for use of the terminal equipment. Pacific Bell Comments at 3. Contrary to the significance petitioners seek to attach to a Part 68 registration grant, these parties argue that the purpose of the registration rules is to protect the network from harm and the fact that a piece of equipment is or is not registrable, is separate from the determination as to whether that terminal equipment constitutes CPE for purposes of Computer II. 20/ They further note that although non-coin devices have been registered since 1981, the Commission has on several occasions since restated the Computer II definition of CPE without retreating from its coin-operated/pay telephone exclusion. 21/

9. AT&T claims that this exclusion is justified in the case of coinless telephones because in making such devices available they are actually offering telephone service to the public at large, and not merely equipment to the premises owner. For their part, the BOCs contend that the coin and coinless pay telephones they provide, from which multiple interexchange carriers can generally be accessed, are offered not as CPE, but as part of the basic exchange telecommunications and exchange access services they are obligated to provide. They point to language in the Department of Justice's (DOJ) Competitive Impact Statement on the proposed MFJ, 22/ as well as the MFJ court's opinion modifying and approving AT&T's Plan of Reorganization (POR) implementing the MFJ, 23/ supporting the notion that the BOCs provide pay telephones to the public as part of their exchange telecommunications and access functions. 24/ According to

19/ [Footnote from preceding page]

Petitioners' and NPTC's reply comments contest the notion that pay telephones are not CPE simply because they are not on the premises of the primary user. In their view, these pay stations are located on some customer's premises, even if that customer makes the telephone available for use by the general public or some segment of the public affiliated with him, such as his customers or patrons.

20/ Pacific Bell, for example, points to the case of party line premises equipment. In addition to pay telephone devices, Computer II initially excluded from its CPE definition equipment attached to residential party line service. On reconsideration of Computer II, however, the Commission revised its definition of CPE to include party line CPE, 84 FCC 2d 50, 70, even though this equipment was not, and still is not, registrable under the Part 68 program. See 92 FCC 2d 1, 36-39. Pacific Bell Comments at 2. See Reply Comments of the Ameritech Companies at 3-4; NYNEX and Southern Bell Reply Comments at 4-5; *infra* note 33.

21/ AT&T points to the Report and Order in CC Docket No. 82-681, FCC 83-457, 48 FR 50,534 (Nov. 2, 1983), in which the Commission stated that "coin-operated and credit card telephones . . . were specifically excluded from the detariffing of CPE under Computer II . . .," para. 4, and the December 15, 1983 Opinion and Order in CC Docket 81-893 detariffing embedded CPE, in which the Commission reiterated that coin-operated or other pay telephones are excepted from the CPE category. AT&T Comments at 2-3. See also Southwestern Bell Comments at 3; the NYNEX and Southern Bell Companies Comments at 3 and Reply Comments at 2-3; Ameritech Companies Reply Comments at 2.

22/ See Competitive Impact Statement in Connection with Proposed Modification of Final Judgment, 47 FR 7170, 7176, n. 21 (Feb. 17, 1982); Comments of Southwestern Bell at 3; the NYNEX and Southern Bell Companies at 6.

23/ See 569 F Supp 1057, 1102 n. 195 (DDC 1983); Comments of Southwestern Bell at 3-4; The NYNEX and Southern Bell Companies at 6-7.

24/ In this regard, the BOCs point to the compelling public interest and policy issues at stake, noting that all aspects of coin and pay telephone service, including the equipment itself, have remained subject to pervasive regulation at the state level, irrespective of the Part 68 status of the equipment. See Comments of the NYNEX and Southern Bell Companies at 4-5; Pacific Bell, at 5-6; Southwestern Bell at 5-6.



Bell Atlantic, even if the Commission finds pay telephones to be CPE as to AT&T, the fact that these BOC-provided pay telephones form a unique and integral part of their network-access obligations to the public justifies exempting exchange carrier public telephones, whether coin or noncoin, from the Computer II regime, and continuing to leave the regulation of this BOC public telephone service to state commissions. Reply comments at 1-3. They emphasize that, unlike the interexchange carriers, the exchange carriers provide pay stations which will allow access to all interexchange carriers, not just the carrier providing the station, and imposition of the Computer II rules would create needless inefficiencies in the provision of this essential public service. Id. 25/

IV. Discussion

10. The petition now before us asks the Commission to clarify the federal regulatory status of the coin and coinless pay telephone devices now being made available to the public by AT&T and the BOCs. This proceeding provides an opportunity to discuss the meaning and scope of Computer II's exclusion of "coin-operated or pay telephones" from the definition of CPE, 26/ and to consider its applicability in light of the regulatory and technological developments since Computer II affecting the provision of pay telephones. There are three general types of pay telephones being provided by carriers subject to Computer II which this decision must address:

(1) Traditional coin telephones provided by the BOCs which require interaction between the telephone instrument and the central office, and use special coin service lines. Interexchange carriers other than AT&T can be accessed, although this generally requires that extra digits be dialed. 27/

(2) BOC-provided coinless pay telephones which may be instrument-implemented, central office implemented or some combination of the two. 28/ These coinless pay telephones may involve operator assistance 29/ or insertion of a calling card or commercial credit card to bill and complete a call. Multiple interexchange carriers can generally be accessed from these coinless pay telephones, and in some instances, on an equal access basis. 30/

25/ The Ameritech Companies focus on the potentially adverse impact grant of the subject petition would have on the ability of the BOCs to provide a quality public telephone service adapted to a multi-carrier equal access environment. In particular, they cite the likelihood that treating public service instruments as CPE would freeze the technology and flexibility the BOCs now have in their efforts to provide pay telephone customers access to their interexchange carriers of choice and to accommodate the diverse billing and credit arrangements of these various carriers. Ameritech Reply Comments at 3.

26/ See supra para. 4.

27/ Although the record of this proceeding focuses on the traditional central office coin service telephones provided by the BOCs, our finding that these devices are not CPE for Computer II purposes extends to any instrument-implemented coin telephones that the BOCs may be providing as well. We note that neither the petitioner nor any of the supporting commenters advocate that we treat the coin telephones used to provide traditional coin service as CPE. See Tonka-Southern Reply Comments at 3.

28/ The record also does not reveal the precise operational characteristics of the BOC-provided coinless pay telephones. As is discussed below, our analysis of the proper regulatory treatment for the non-coin pay telephone devices of the BOCs obtains whether the intelligence for this service is located in the instrument, the central office or both, and whether or not these devices are registered.

29/ See for example, the "Charge-A-Call" coinless pay telephone set, Registration No. BW88T7-68413-TE-T, granted August 19, 1981. The POR, as modified, assigned all the Bell System's "Charge-A-Call" sets to the BOCs. See 569 F Supp at 1102, n. 195, supra note 23.

30/ One example of this type of offering is Mountain Bell's Goldphone Service. The Goldphone is a public telephone that affords convenient access to multiple long-distance carrier

[Footnote continued on following page]

(3) Coinless telephones provided by AT&T which can be used to make interexchange calls over the AT&T network. These devices may or may not be used to make local calls, depending upon the individual state policies and whether or not AT&T is certificated to provide intra-LATA service in the state.

11. After reviewing the record before us, we conclude that the Computer II pay telephone exclusion encompassing both the traditional and more recent coin and coinless pay telephones provided by the BOCs and AT&T, as described above, and accordingly, that these devices do not constitute CPE for purposes of Computer II. The original Computer II policy excluding pay telephones from "CPE" reflected a determination that the pay telephone devices then being provided by telephone companies formed an integral part of a communications transmission service, i.e., pay telephone service, 31/ and as such should remain subject to regulation under Title II of the Communications Act. As originally conceived, the pay telephone exclusion recognized that the technical integration of the pay terminal and central office phone exclusion recognized that the technical integration of the pay terminal and central office facilities characteristic of the coin service then being provided distinguished these types of devices from the general class of CPE being detariffed by Computer II. While it is true that the pay telephone exclusion was formulated at a time when the only type of coin telephones available were those activated and controlled through the telephone company's central office and used to provide coin service which was the exclusive province of the telephone companies, we do not agree with petitioners that the CPE pay telephone exclusion is therefore limited to those types of devices.

12. In considering the applicability of Computer II to the newer, more innovative and technologically advanced coin and coinless pay telephones, some of which do not rely upon central office facilities and interaction, we conclude that the pay telephone exclusion does not rest upon considerations of technical severability alone. Regardless of the method of payment or operational characteristics of these newer devices, they have not changed in one important respect: the equipment and transmission capacity are not logically severable. Pay telephones provided by carriers subject to regulation have historically been accorded special regulatory status because they serve the public service role of ensuring pay telephone service is available to the transient, mobile public, and they have as their primary customer or user the general public. Even if the telephone company describes the service as "semi-public" and collects a charge from a subscriber such as a bar or restaurant, the primary customer of this pay telephone equipment for Computer II regulatory purposes is still the general public or some segment thereof. As to these customers or users the telephone instrument and line are necessarily integrated. The user of these devices pays a single charge in order to place a call from a pay telephone at a public or semi-public location. The instrument and the pay telephone service are not severable from that customer's perspective. Although free to choose another location from which to place his call, the customer cannot separately select, combine or pay for the terminal device and transmission line which are used to make the call. In this sense, the pay telephones and transmission capacity provided by AT&T and the BOCs are

30/ [Footnote continued from preceding page]

networks in addition to all of the other calling services associated with "Charge-A-Call" coinless public telephone service. This service substitutes two digit speed calling capability for the numerous digits now required to access GTE Sprint and MCI networks. In order to promote "equal access" AT&T callers must also dial a two digit access code. See letter from Mountain Bell to Commissioner Dennis Patrick, dated May 7, 1984.

31/ The AT&T and BOC coin and coinless pay telephones used to provide pay telephone service are part of the public telephone system, which includes "public" and "semi-public" telephone service. "Public" telephone service is provided when a general need for the service exists in a public location such as an airport or street corner and the telephone is placed at the option of the telephone company with the agreement of the owner (or agent or lessee) of the property. "Semi-public" telephone service is provided when there is a combination of transient public and specific customer use for the service on the customer's privately owned premises such as a gasoline station or restaurant. See Coin Registration Order at note 10. Our analysis here remains the same whether the pay terminals are located at public or semi-public locations.



logically an integrated offering and these carriers should be permitted to provide them as an end-to-end service. ^{32/}

13. This conclusion is independent of the issues of Part 68 registration and competition. In response to petitioners' arguments to the contrary, we note that there is no precedent supporting the notion that Part 68 registration inherently classifies equipment as CPE under Computer II. While it is true that equipment included within the registration program is equipment that may be provided by noncarrier vendors and connected directly to the network, it is also true, as the BOCs and AT&T assert, that registration does not, and should not, of itself dictate the manner in which Computer II-subject carriers may provide that same equipment. ^{33/} A Part 68 registration grant for a pay telephone reflects no more than a determination that it may be connected to the network without harm; it does not of itself determine the Computer II status of that equipment. Regardless of whether that equipment is Part 68 registered, for the reasons discussed above we agree with AT&T and the BOCs that their pay telephone devices constitute an offering to the public of a communications service.

V. Conclusion

14. The Computer II exclusion of pay telephone central office equipment from the definition of CPE was based upon the coin service that then existed and reflected the Commission's determination that this equipment was distinguishable from the general class of CPE to be detariffed and should continue to be provided in its traditional manner: as part of an end-to-end communications service. We have reexamined this exclusion in light of the various regulatory and technological changes which have altered pay telephone devices and the environment in which they are offered, and find that the exclusion nonetheless remains valid today for the variety of pay telephones the BOCs and AT&T are making available to the public. We therefore conclude that the pay telephone service provided by AT&T and the BOCs is a communications service which should be provided subject to regulation, and that the coin and noncoin pay terminals made available by these carriers do not constitute CPE for purposes of Computer II.

15. Accordingly, it is ordered, that the petition for declaratory ruling filed by Tonka Tools, Inc. and Southern Merchandise Corp. is denied in accordance with the foregoing opinion.

^{32/} Recent federal and state actions have introduced an opportunity for competition in the pay telephone arena, enabling unregulated entities to provide pay telephone services on a resale basis through the packaging of pay terminals and transmission capacity, thus increasing the pay equipment and service options available to the public. We are not convinced that allowing AT&T and the BOCs to continue to offer integrated pay telephone service presents any serious threat to the viability of these competitors.

^{33/} For example, in the First Report and Order in CC Docket No. 81-216, the Commission adopted Part 68 rules that permit customers to install their own nonsystem, i.e., business and residential one and two-line, customer premises wiring. Despite its inclusion in Part 68 and competitive provision, however, this inside wiring has been provided by the telephone companies on a regulated basis. 97 FCC 2d 527 (1984). In a recent Further Notice of Proposed Rule Making in CC Docket No. 79-105, however, the Commission has proposed the detariffing of the installation of simple inside wiring provided by the telephone companies. FCC 85-148, released April 5, 1985. See also *supra* note 20.

**ORDER OF THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

DOCKET NO. UT-920174

MARCH 17, 1995

SERVICE DATE

MAR 17 1995

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NORTHWEST PAYPHONE ASSOCIATION, A)	
WASHINGTON NON-PROFIT CORPORATION,)	
DIGITAL ACCESS COMMUNICATIONS CORP.,)	
NCS TELEWORK COMMUNICATIONS CO.,)	
PAYTEL NORTHWEST, INC., and PUBLIC)	
COMMUNICATIONS OF AMERICA,)	DOCKET NO. UT-920174
)	
Complainants,)	
)	
v.)	ORDER GRANTING COMPLAINT
)	IN PART
U S WEST COMMUNICATIONS, INC.,)	
)	
Respondent.)	
.)	

SUMMARY

PROCEEDINGS: On February 7, 1992, the Northwest Payphone Association (NWPPA or complainants) and four of its members, Digital Access Communications Corp., NCS Telework Communications Co., Paytel Northwest, Inc., and Public Communications of America,¹ filed with the Commission a complaint against U S WEST Communications, Inc. (U S WEST or company), alleging that the rates, charges, rules, regulations, and practices of U S WEST regarding the payphone services of non-local exchange company (LEC) providers are unreasonable, discriminatory, illegal, and unfair. The complaint alleged that the competitive public payphone industry has been hindered by the anti-competitive abuses of U S WEST. In its answer, U S WEST denied the allegations and argued that competitive payphone providers (CPPs) must register with the Washington Utilities and Transportation Commission as telecommunications companies.

HEARINGS: The Commission held twelve days of hearings in this proceeding. Hearings were held in Olympia before Chairman Sharon L. Nelson, Commissioners Richard D. Casad, A.J. Pardini, and Richard Hemstad, who also reviewed all of the testimony and exhibits, and Administrative Law Judge Heather Ballash of the Office of Administrative Hearings.

¹ After the complaint was filed, NCS Telework Communications Co. and Paytel Northwest, Inc., merged into the surviving entity Paytel Northwest, Inc.

APPEARANCES: The Northwest Payphone Association and the four other complainants were represented by Brooks Harlow and Clyde MacIver, attorneys, Seattle. The Staff of the Washington Utilities and Transportation Commission (Commission Staff) was represented by Sally G. Johnston, assistant attorney general, Olympia. U S WEST Communications, Inc., was represented by Edward T. Shaw, Steve Holmes, and Molly Hastings, attorneys, Seattle.

COMMISSION: The Commission orders U S WEST to reduce its public access line rate to the equivalent simple business line rate and to eliminate usage charges. The Commission also orders U S WEST to reduce its answer supervision-line side monthly recurring rate from \$3.95 to \$1.00. Based upon the Commission's imputation analysis, these two reductions eliminate the price squeeze created by the price charged to competitors for essential monopoly or "bottleneck" inputs and the \$0.25 per call charged to end-users for a local call. Additionally, the Commission orders U S WEST to respond in writing to competitive payphone providers' requests for network services within 120 days of a request. U S WEST shall implement the request by offering the service under tariff if the service is feasible based upon currently available technology and if forecasted demand is sufficient to allow U S WEST to recover its costs. U S WEST shall implement the request as soon as practicable and no later than 6 months following the receipt of the customer's request.

SCOPE OF PROCEEDINGS

I. Procedural History

A pre-hearing conference in this complaint proceeding was convened on June 2, 1992; the parties agreed to reconvene for another pre-hearing conference at a later date.¹ On September 16, 1992, prior to the reconvening of the pre-hearing conference, oral argument on a motion to compel discovery was held. On October 16, 1992, the pre-hearing conference was reconvened.

The pre-filed testimony and exhibits of the NWPPA were cross-examined on February 1 and 2, 1993. On February 2, 1993, at the conclusion of the cross-examination of the complainant's direct case, U S WEST made an oral motion to dismiss the NWPPA's complaint for lack of jurisdiction. After briefs were filed and oral argument heard, the Commission denied the company's motion on February 10, 1993.

¹ The continued pre-hearing conference was set October 5, 1992, but due to the Commission's schedule was moved to a later date.

The pre-filed testimony and exhibits of U S WEST and Commission Staff were cross-examined on October 11, 13, 14, and 15, 1993. Hearings for cross-examination of the NWPPA's rebuttal testimony and exhibits were held on December 13 and 14, 1993. Briefs were filed with the Commission on February 22, 1994.

II. Issues Presented

There are two fundamental policy issues inherent in the allegations of the NWPPA complaint. First, whether the complainants must be registered as telecommunications companies in order to invoke the jurisdiction of the Commission. Second, the merits of the complainants' allegations that U S WEST is acting in an anti-competitive manner. The latter issue relates to U S WEST's pricing strategies, service offerings, discrimination, and other alleged anticompetitive conduct in the provision of public payphone services.

III. Summary of the Parties' Recommendations

A. NWPPA

NWPPA alleges that U S WEST's pricing strategies and anticompetitive practices have subjected the competitive payphone providers to a price squeeze in the payphone market. To remedy this situation, they recommend the company create a separate subsidiary for its payphone operations or file an annual imputation study. They also ask that U S WEST reduce the rate for a public access line, the message rate (after the 300th call), and the answer supervision-line side rate. In their view, U S WEST also has subjected the competitive payphone providers to a price squeeze in the operator services market and therefore should pay commissions to PAL subscribers on non-sent paid calls.

NWPPA further claims that U S WEST provides inferior services to competitive payphone providers (CPPs) when compared to those provided to the company's payphone service. The company therefore must offer coin line service to CPPs, handle repair and refund requests in the same manner for PAL subscribers as for its own payphones, offer answer supervision in all central offices where it is technically feasible, and offer magnetic billing to PAL subscribers within six months.

It is alleged that U S WEST discriminates in its installation of public access lines and in its access to customer proprietary network information, and therefore should be ordered to stop improperly delaying PAL order installations due to an existing U S WEST or other vendor payphone, and establish a separate computer system or install other security provisions that physically prevent its payphone personnel from obtaining access to the general payphone and the PAL data bases.

Complaint is made that U S WEST's advertising practices have been unfair and misleading and constitute improper anticompetitive behavior because competitive payphone providers are "captive competitors." The complaint asks that U S WEST therefore stop using the advertisements contained in Ex. 18 and Ex. 54 and any similar advertising. It contends that the company also should cease making any advertising claims that (1) it has the most reliable payphones or the fastest service; (2) non-U S WEST payphones will "cut-off" callers; (3) non-U S WEST payphone owners do not give refunds; and (4) non-U S WEST payphones do not return coins for uncompleted calls.

According to NWPPA, the company "locks" payphone site owners into long-term contracts using the unfair advantages of the price squeeze and its superior coin line service. Therefore, site owners should be allowed to "opt out" of their contracts during the 12 month period beginning with termination of the price squeeze and offering of coin line service, whichever is later.

Finally, NWPPA alleges the "one phone per PAL" rule is inefficient and places complainants at a competitive disadvantage. U S WEST should remove the one phone per PAL rule from its tariffs, and the Commission should commence a rulemaking proceeding to address the similar provision in WAC 480-120-138(13).

B. U S WEST

U S WEST answers that the complainants have failed to comply with state law and register with the Commission as telecommunications companies. They provide the same telecommunications services in their provision of public payphone service as do all other local exchange companies and until they are registered, the Commission cannot proceed with this complaint.

U S WEST posits that even if the Commission finds that public payphone service is not a telecommunications service subject to its jurisdiction, the complaint must still be dismissed: (1) if complainants are customers of U S WEST, and not telecommunications companies, complaining about rates charged to them, they have failed to comply with RCW 80.04.110; (2) regardless whether RCW 80.04.110 permits this complaint by customers, the Commission has no jurisdiction to consider the effect of U S WEST's rates upon the competitive interests of unregulated competitors; and (3) even if the Commission has jurisdiction to address such allegations of anticompetitive behavior, the evidence in this proceeding fails to support those allegations.

U S WEST responds that its payphone services rates and its PAL rates are fair, just, reasonable, and nondiscriminatory. It is therefore premature for the Commission to establish an imputation test for these local exchange services because there is no evidence that U S WEST's rates or its charges to competitive payphone providers are improper or that rates charged by U S WEST for its services to the public are unfair, unjust, unreasonable, or insufficient.

C. Commission Staff

Commission Staff recommended only that (1) there be no increase in the local coin rate of \$0.25, and (2) there be no reduction in the public access line (PAL) rate.³

MEMORANDUM

The Commission faces numerous difficult issues as it attempts to facilitate the transition of the telecommunications industry from a monopoly market structure to a competitive market structure. One of the most difficult issues is determining what constitutes anticompetitive behavior. Yet, this is precisely what resolution of this complaint requires. The complainants argue that U S WEST's pricing strategies and business practices are anticompetitive and impede their ability to effectively compete in the public payphone market.

In response, U S WEST denies all allegations of anticompetitive behavior and argues that the competitive payphone providers must be registered as telecommunications companies in order to invoke the jurisdiction of the Commission.

The Commission first must address the question whether it has jurisdiction over this complaint. If the Commission determines it has the authority to decide the issues posited by the complaint, then we must address the complainant's allegations of anticompetitive behavior by U S WEST in the public payphone market.

³ During the hearing, the Commission expressed its dismay that Commission Staff took no position on several key issues in the NWPPA complaint. On brief, Staff argued that it is not unusual for it to assume a limited role in a private complaint case where both complainant and respondent are represented by counsel. Regardless whether Staff should have taken a more active role in this proceeding, the Commission finds the Staff's investigation in this case too narrow and too limited to support its recommendations.

I. Legal Jurisdiction

Based upon its assertion that competitive payphone providers must be registered as telecommunications companies, U S WEST maintains that this complaint must be dismissed because the complainants: (1) failed to register as telecommunications companies as required by state law; (2) raised issues beyond the jurisdiction of the Commission; and (3) failed to prove their allegations on issues within the Commission's power to decide, if its jurisdiction was properly invoked.

On February 10, 1993, after reviewing written and oral arguments on U S WEST's motion to dismiss the complaint, the Commission determined that the motion to dismiss should be denied. The basis of the Commission's decision was threefold.

First, Paytel Northwest, Inc., is a registered telecommunications company which makes it a public service company under Title 80 RCW. The Commission rejected the proffered U S WEST distinction that as a registered alternate operator service (AOS) provider, Paytel could complain only with regard to operator service matters.

Second, the Commission has jurisdiction to consider this complaint under the general terms of RCW 80.04.110; the complaint is not only against rates, but against other terms and conditions of service as well, which would authorize any person to bring such a complaint. In addition, the Commission found persuasive the complainants' argument that the purpose of the complaint statute is to assure that rate complaints are serious enough that substantially more than a single consumer is required to join in a complaint before the Commission may act. Not only are four companies represented by this complaint, but so is the Northwest Payphone Association which is comprised of numerous telecommunications companies registered with the Commission.

Third, the Commission has jurisdiction under RCW 80.36.135(6), which provides that a person may file a complaint against a company under an alternative form of regulation.⁴ RCW 80.36.135(6) states in pertinent part:

⁴ U S WEST, at the time the complaint was filed, was regulated under an alternative form of regulation which expired December 31, 1994. See, Fourth Supplemental Order Accepting Settlement With Modifications, Resolving Complaint And Authorizing An Alternative Form Of Regulation, Docket Nos. U-89-2598-F and U-89-3245-P, January 16, 1990.

The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of this act: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint.

Finally, the Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186.

Based upon the discussion of the aforementioned arguments, and the broad powers granted the Commission to guard against discrimination, the Commission reaffirms its ruling that it has jurisdiction to consider the complaint. The fact that some competitive payphone providers are not registered with the Commission does not prevent the Commission from granting the complainants such relief as is supported by the record evidence.⁵

II. Determination of Anticompetitive Behavior

A. Price Squeeze

The complainants allege that U S WEST is acting in an anticompetitive manner by creating a price squeeze and by discriminating between the services it provides for competitive payphone providers and the services it provides for its own payphone operations. The price squeeze results from the interaction of the rate charged the competitive payphone providers for access to the network -- the Public Access Line (PAL) rate -- and the rate U S WEST charges for use of its payphones by end-users. A price squeeze is defined by the NWPPA as the equivalent of selling below cost. The direct testimony of NWPPA witness Dr. Cornell states:

A price squeeze exists when the monopolist sets the price for its monopoly input and for the "competitive" downstream product in such a manner that dependent competitors that are just as efficient as the

⁵ The Commission does not regulate cellular or voice mail providers. Nevertheless, if one of these service providers complained that U S WEST was abusing its monopoly position to unfairly compete against them, U S WEST could not assert lack of registration as defense against, or could not demand registration as a pre-condition to, the Commission's granting such relief as may be proven in a formal proceeding.

monopolist cannot charge the same price for the output that the monopolist charges and still cover all their costs due to the higher price that they must pay for the monopoly input.⁶

With respect to certain toll services, the Commission utilizes an imputation test to determine the appropriate imputed cost and price floor. The purpose of imputation is to establish a price floor for retail services in a market where the monopoly provider of the bottleneck network facilities competes against a competitor at the retail level. With respect to toll services, the Commission has already established an appropriate imputation methodology, i.e., tariffed rates for essential facilities plus any additional long-run incremental costs necessary to provide the service.⁷ In this case, the bottleneck facility is the public access line and the retail service is the public payphone market.

While imputation requirements for toll services have been refined in prior proceedings, imputation in the public payphone market, and other local exchange services, is relatively new. The controversy over imputation is evidenced not only by the parties' arguments in this proceeding, but U S WEST's position that the Commission must first consider whether such a price test for a local exchange service is appropriate for the Commission to prescribe in the first instance. The Commission believes a price test based on imputation principles is appropriate. As stated in the Commission's CentrexPlus Order:

[T]he Commission believes the principles of imputation are appropriate for pricing essential monopoly elements of competitive services.⁸

It remains the Commission's policy to require imputation where there is competition, or emerging competition, to U S WEST's services and the competitors are dependent upon U S WEST for certain essential bottleneck inputs in order to provide their services.

⁶ Testimony of Dr. Nina W. Cornell, Ex. T-1, p. 13.

⁷ The Commission first approved the principle of imputation in Docket No. U-85-23; it was further refined in Docket No. U-87-1083-T and Docket No. U-88-2052-P.

⁸ Fourth Supplemental Order Denying Complaint; Accepting Tariffs Conditionally; Requiring Tariff/Price List Refiling, Docket Nos. UT-911488,-911490,-920252, November 18, 1993, p. 13.

B. U S WEST's Imputation Analysis

U S WEST presented two versions of an imputation test. Their initial imputation analysis showed the company's costs of providing a local call, on an imputed basis, was \$0.273 per call.⁹ The revised imputation test (Ex. C-27) estimated that the \$0.25 per call barely covered relevant costs.¹⁰

In its revised imputation analysis, the company excluded public policy payphones. U S WEST witness Mr. Lanksbury testified that the revised imputation study reflected that 10.2 percent of public payphones were removed as public policy phones. When questioned about the definition of a "public policy" payphone, Mr. Lanksbury responded that neither the Commission nor the Washington Legislature has defined what is a public policy payphone. In Oregon, Mr. Lanksbury noted, a workshop has developed criteria in order to define a public policy payphone.¹¹

In addition to excluding public policy phones, U S WEST argues that toll and operator service revenues should be included in the imputation analysis. The company states that if it were to include toll and operator service revenues and costs in an analysis of the profitability of its payphone operations, not

⁹ This non-confidential figure was discussed on the record. TR., pp. 593-594.

¹⁰ U S WEST revised its imputation test by 1) changing the Federal Communications Commission's rate for end-user access charge, 2) changing the total number of stations to reflect removal of public policy payphones, (3) changing the imputed PAL non-recurring rate, 4) removing the answer supervision-line side service element, 5) removing the outgoing screening service element, and 6) imputing the revenue from "Yellow Page" directory placement maintenance paid to U S WEST from U S WEST Direct, the directory publisher.

¹¹ Mr. Lanksbury testified that Oregon uses the following criteria to identify "public policy" phones: (1) profitability -- does the payphone generate less than \$100 a month in revenue; (2) the payphone can be either coin or coinless; (3) there must be at least one payphone available 24 hours a day in every municipal government entity; (4) the payphone must not be part of a contract with a space provider; and (5) special public sites with public access, where no fee is charged and there is no other telephone within 1/4 mile of the site. TR., pp. 604-606

only would it cover costs but it would be very profitable.¹²
On brief, U S WEST argues:

Properly analyzed, the revenues U S WEST directly derives from its public payphone service--local, toll, directory assistance and operator charges--are more than adequate to cover its long-run incremental costs for non-essential service elements and tariffed rates for essential elements that must be used by its competitors, even if an imputation test were to be required by this Commission for local exchange services like payphone service.¹³

C. NWPPA's Imputation Analysis

NWPPA witness Dr. Cornell developed an imputation test (Ex. C-3) which purported to show that U S WEST's pricing strategies have subjected competitive payphone providers (CPPs) to a price squeeze. Dr. Cornell's initial imputation analysis limited revenues to local coin, directory assistance, and the coin toll surcharge. Dr. Cornell included directory assistance revenues and expenses based on the argument that directory assistance is a bottleneck monopoly service, thus distinguishable from operator services. Dr. Cornell argues that payphone revenues are those revenues that U S WEST gets if it places the payphone, and does not get if it does not place the payphone but takes all reasonable steps to supply network services.

With respect to U S WEST's revised imputation analysis, complainants contend there are at least two problems with U S WEST's determination of what constitutes a public policy payphone: (1) U S WEST has used an inconsistent definition of such a payphone, and (2) the company's workpapers do not support its claims as to the number of such payphones. According to the complainants, these errors reveal that U S WEST claims more than twice the number of public policy payphones as the company's data supports.

¹² Closing Memorandum of U S WEST Communications, Inc., p. 28.

[N.B.: It is interesting to note that if the Commission were to extend this same rationale to other markets, e.g., the residential local exchange service market, then toll revenues, carrier access revenues, and revenues from custom calling features would need to be included in the imputation test for residential basic local service.]

¹³ Id., pp. 4-5.

Although complainants disagree with the U S WEST imputation analysis which excluded public policy payphones, Dr. Cornell filed a revised imputation test (Ex. C-75) that excluded public policy payphones.¹⁴ Dr. Cornell's revised imputation test also included as revenues directory payments from U S WEST Direct.¹⁵ Based on Dr. Cornell's revised imputation test, the CPPs were still being subjected to a price squeeze.

D. Commission Discussion and Decision

1. Imputation

As evidenced by the testimony and exhibits in the record, there is considerable debate as to the proper imputation test for payphone service. It is especially unclear what position U S WEST advocates. Initially, the company claimed the \$0.25 per local call didn't meet an imputation test. After the company made certain adjustments in its imputation analysis, the \$0.25 per local call only barely covered imputed costs. Finally, on brief, the company argued that a completely different imputation test should be used -- an imputation test that accounts for toll and operator service revenues.¹⁶ This inconsistency illustrates well U S WEST's ability to control cost information and, as a result, to frustrate efforts to penetrate the relationship between its costs, by whatever definition, and its prices.

Based upon the evidence presented in this case, the Commission believes the appropriate payphone imputation analysis compares the revenue derived from a local call with the tariffed rate for "bottleneck" network services, plus the additional incremental costs of providing local payphone service. Admittedly, this is a very narrow and conservative imputation test. The reason is twofold. First, if the Commission were to include toll and operator services revenues in the imputation

¹⁴ The number of public policy payphones excluded from Dr. Cornell's analysis was slightly less than one-half the number of payphones excluded in U S WEST's analysis.

¹⁵ Dr. Cornell stated she was unsure whether it was appropriate to include U S WEST Direct revenues in the imputation analysis.

¹⁶ In U S WEST's conceptual proposal for a new alternative form of regulation (AFOR), the company states that several services will have to be adjusted to cover costs, including payphone local rates. U S WEST COMMUNICATIONS, INC.'S (USWC) AFOR PROPOSAL, Docket No. UT-931349, August 3, 1994.